IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.5354-M of 2004

Date of Decision: January 30, 2007

Lt.Col.K.B.Singh (Retd.)

...Petitioner

VERSUS

Dharam Pal through attorney Smt.Krishna Devi

...Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Raman Sharma, Advocate,
for the petitioner.

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The petitioner, who is facing prosecution under Section 138 of the Negotiable Instruments Act (hereinafter called the `Act'), has filed this petition seeking quashing of the complaint and the order dated 2.12.2003, whereby his application for discharge filed under Section 246 Cr.P.C. is dismissed.

The petitioner, a retired Lt.Col. from the Army and who took re-employment with M/s Aneja Group of Hyderabad as its Manager at Mohali Branch, is being prosecuted for dishonouring of a cheque issued by M/s Aneja

Group. Petitioner concedes that he had an authority to operate the account and sign the cheques jointly with one Col.D.S.Cheema (Retd.), Regional Manager of the Company. The petitioner, however, points out that this authority was withdrawn vide communication dated 19.1.1998. Thus, he claims that he had authority to sign the cheque only for about a period of seven and half months. Being an employee of the accused Company, the petitioner received money from public under various schemes and then use to forward the same to the Regional Office of the Company. Realising that the Company was in financial constraints and was defaulting in repayment of the money, the petitioner alongwith other staff had approached the Chairman/Managing Director, in response to which an appeal was issued for the investors that there would be no responsibility of the Regional/Branch offices and the Chairman/Managing Director would be fully responsible for the money invested in the Company. On this basis, the petitioner states that complainant's allegation, making him responsible for the liability, is false and he cannot be held liable for the dishonour of the cheque. It is otherwise conceded that the Company had failed to honour the liability and that the Mohali Office was closed on 15.2.1998. The petitioner has disclosed that he tendered his resignation and when it was not being acknowledged, he got a public notice published in the Indian Express on 16.5.1999 in this regard. The complainant, who had invested/deposited amount with the Company, has filed the complaint under Section 138 of the Act on account of dishonour of cheque No.631097 dated 31.7.1998 amounting to Rs.3,65,000/-, which had been issued to the complainant for discharge of their liability on account of his

investment. It is pleaded in the complaint that the petitioner (accused No.3) was employed as Branch Manager of M/s Aneja Group (accused No.1) and was responsible for its over all administration. The cheque, as per the averment in the complaint, had been signed by Shri I.J.Aneja (accused No.2) and accordingly it is pleaded that all the accused were responsible for the over all administration and as such were liable to be prosecuted in view of the provisions of Section 141 of the Act. The petitioner stands summoned on the basis of a preliminary evidence led. His application filed under Section 246 Cr.P.C for discharge was dismissed on 2.12.2003. Whereafter the present petition is filed by him.

During the pendency of the case, a photo copy of the order dated 21.9.2004 passed by Judicial Magistrate Ist Class, Chandigarh in the complaint case titled as `Dharam Pal Vs. Aneja Group' was placed on record, which revealed that the Magistrate while adjourning the case sine-die observed as under:-

> “In view of the statement suffered by counsel for the complainant the proceedings in the present case are hereby adjourned sine-die. Accused No.3 Col.K.B.Singh is discharged from the liability of bail bonds and surety bonds. File be consigned to record room and be put up as and when required by court.”

The above order was passed on the basis of statement of counsel for the complainant, which was:-

> “Statement of Sh.V.P.Chatrath Adv.counsel for complainant.

Since it has not been possible to get the latest correct address of accused I.J.Aneja, Chairman and M.D. of Aneja Group, hence it is prayed that case may be adjourned sine-die. The case will be got revived as and when the main accused I.J.Aneja is either arrested or his whereabouts are known, till the time accused no.3 may be discharged."

As is seen, the case was adjourned sine-die on the statement made by counsel for the complainant. The counsel made prayer on the ground that the address of accused No.1, I.J.Aneja was not available. He further stated that the case be revived when the main accused is either arrested or his whereabouts are known. He also stated that the present petitioner be discharged till then. It is not understood as to how merely on account of non-service to one of the accused, the court adjourned the case sine-die that too on the statement of a counsel. One of the accused was discharged of surety bond. The court had already rejected the prayer for discharge made by the said accused. Even if service to one of the accused (may be even main accused), was not being effected, then the procedure under law was required to be followed. It is doubtful if such a course as adopted by the Magistrate can be held justified in law. It has resulted in putting the case in a cold storage with no scope of its revival. Should the complainant be allowed to regulate the course of trial? Was the court required to proceed with the case against the accused before it and decide their fate on the basis of evidence that the complainant could have led? Can the petitioner make to suffer this uncertainty and threat of prosecution allowed hanging over his

head for times to come? Petitioner may rightly feel aggrieved against the action of the court though his prayer for quashing the proceedings on this ground may not appear justified.

The petitioner even otherwise has conceded that he was responsible for the Branch Office and had been accepting investment on behalf of the Company, it cannot be said that he was not responsible for the affairs of the Company. While dismissing the application of the petitioner for discharge, the Magistrate had rightly observed that question in regard to the responsibility of the petitioner or to see if he was Incharge of the affairs of the Company or was responsible for the affairs of the Company etc., would be a matter of evidence, required to be seen during the course of trial. Accordingly, no case for quashing the proceedings is made out. However, while dismissing the present petition, a direction need to be issued to the Judicial Magistrate Ist Class, Chandigarh to take up this case for disposal by putting the case for hearing after notice to parties and continue with the same in accordance with law.

January 30, 2007 (RANJIT SINGH)
ramesh JUDGE

Present: Mr.Raman Sharma, Advocate,
for the petitioner.

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Vide separate order, this petition seeking quashing of complaint stands dismissed. On 8.5.2006, Judicial Magistrate Ist Class, Chandigarh was directed to justify his order dated 21.9.2004. In response, a communication No.795 dated 23.12.2006 was received under the letter from District and Sessions Judge, Chandigarh dated 11.1.2007. The perusal of this communication would show that the case was adjourned sine-die basically on a prayer made by the counsel, who stated that the latest correct address of accused I.J.Aneja was not available. The counsel also stated that the case be revived as and when I.J.Aneja is either arrested or his whereabouts are known. Though the Magistrate has now submitted that this order did not amount to discharge of the petitioner, yet he has not submitted any reason justifying passing such an order. Let the explanation of the concerned Magistrate, who passed the order, be obtained through District and Sessions Judge, Chandigarh, by the Registry and placed before the Administrative Judge of Chandigarh as well as before the Administrative Judge of District where the said Judicial Officer is presently serving.

(RANJIT SINGH
January 30, 2007 JUDGE